

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ST. LOUIS HEART CENTER, INC.,)
individually and on behalf of all others)
similarly situated,)
Plaintiff,)
v.) Case No. 4:12-CV-2224-JCH
FOREST PHARMACEUTICALS, INC.,)
et al.,)
Defendants.)

JOINT MOTION TO DISSOLVE STAY AND DISMISS CASE

Comes Now Defendant Forest Pharmaceuticals, Inc. (“Forest”) and Defendant Peer Group, Inc. (“Peer”) (Forest and Peer referred to collectively as “Defendants”) and Plaintiff St. Louis Heart Center, Inc. (“Plaintiff”) and with Plaintiff and Defendants referred to collectively as the “Parties,” and jointly move that the Court dissolve the stay entered in this matter so that the Court can take up the Stipulation of Dismissal filed contemporaneously with this Motion. In support of this Joint Motion and Stipulation, the Parties state as follows:

1. On July 17, 2013, the Court issued an Order staying this action. (D.E. 72).
2. The Court’s Order provided that this action would be stayed until final rulings were issued by the Federal Communications Commission (“FCC”) on Defendant Forest’s Petition for Declaratory Relief and/or Waiver, and on any appeals filed in connection with such ruling. (D.E. 72).
3. Consistent with that Order, the Parties have prepared the following Joint Motion and Stipulation to notify the Court that all appeals in connection with the FCC’s ruling now are

concluded. This stay order therefore is ripe to be dissolved, and thereafter, the case for dismissal, as set forth in the Stipulation for Dismissal filed concurrently herewith.

4. On October 30, 2014, the FCC released an order (the “FCC Order”) addressing the petitions filed by Forest and others (collectively, the “Petitioners”). *In re the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005; Application for Review filed by Anda, Inc.; Petitions for Declaratory Ruling, Waiver, and/or Rulemaking Regarding the Commission’s Opt-Out Requirement for Faxes Sent with the Recipient’s Prior Express Permission*, CG Docket Nos. 02-278, 05-338, Order, 29 FCC Rcd. 13998 (rel. Oct. 30, 2014) (“FCC Order”).

5. The FCC Order granted some of the requested relief and denied some of the requested relief. *FCC Order ¶¶ 19–20 & n.70; Id. at ¶¶ 1, 22.*

6. Multiple parties, including Plaintiff and Forest, filed petitions for review of the *FCC Order*. The U.S. Judicial Panel on Multidistrict Litigation consolidated these petitions in the U.S. Court of Appeals for the District of Columbia Circuit. *In re Federal Communications Commission, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, order, FCC 14-164*, Case MCP No. 124, Consolidation Order (J.P.M.L. Nov. 13, 2014) (order consolidating petitions for review).

7. On March 31, 2017, the D.C. Circuit Court of Appeal struck down the Solicited Fax Rule, holding — as Forest and other TCPA defendants had argued — that the Telephone Consumer Protection Act, as amended by the Junk Fax Protection Act, “does not require (or give the FCC authority to require) opt-out notices on solicited fax advertisements.” *Bais Yaakov of Spring Valley v. FCC*, 852 F.3d 1078, 1082 (D.C. Cir. 2017).

8. On June 6, 2017, the D.C. Circuit Court of Appeals denied the petition for rehearing en banc sought by Plaintiff and other TCPA plaintiffs on June 6, 2017, with no member of the court requesting a vote on the petition, and denied the TCPA plaintiffs' subsequent motion to stay the issuance of the D.C. Circuit's mandate pending their anticipated petition for writ of certiorari to the Supreme Court. *Bais Yaakov of Spring Valley v. FCC*, No. 14-1234, Doc. No. 1678394 (D.C. Cir. June 6, 2017) (order denying rehearing); *Bais Yaakov of Spring Valley v. FCC*, No. 14-1234, Doc. No. 1681812 (D.C. Cir. June 28, 2017) (order denying stay).

9. The TCPA plaintiffs filed a petition for writ of certiorari. Thereafter, the Supreme Court denied the petition for certiorari. *Bais Yaakov of Spring Valley v. FCC*, 138 S.Ct. 1043 (Feb. 20, 2018).

10. Because the FCC has ruled on Defendant Forest's Petition for Declaratory Relief and/or Waiver, and all appeals filed in connection with such ruling are final, it is appropriate to dissolve the stay order entered in this action in docket entry number 72.

11. Contemporaneous with this filing, a Stipulation of Dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) is being filed.

Wherefore the Parties jointly move that the Court dissolve the stay entered in this matter so that the Court can take up the Joint Motion to Dismiss filed contemporaneously with this Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on September 17, 2019, a true and correct copy of the above and foregoing document has been served upon all counsel of record by filing this document on the Court's CM/ECF filing system.

/s/ Glennon P. Fogarty